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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/801,764	03/09/2001	Guenther Hess	197934US6	4543

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EXAMINER

NOVOSAD, JENNIFER ELEANORE

ART UNIT	PAPER NUMBER
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3634

DATE MAILED: 06/25/2002

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Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/801,764

Applicant(s)

HESS ET AL.

Examiner

Jennifer E. Novosad

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 14 May 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1,2,4-6 and 8-14 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2,4-6 and 8-14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

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### DETAILED ACTION

Claims 3 and 7 have been canceled.

#### *Claim Rejections - 35 USC § 112*

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 8 and 14 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 8 and 14 are rendered indefinite since it is unclear, from the inclusion of the comma in the second line, what the coating is comprised of, i.e., (a) plastic or polyamide, or (b) plastic polyamide or polyamide. It appears, in view of the specification (see paragraph 0011, line 5), that “, polyamide” in line 2 of each of the claims 8 and 14 should be deleted.

#### *Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 2, 6, 8, 9, 10, 13, and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Llewellyn '993, alone.

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Llewellyn '993 discloses an assembly defined by a dishrack in a dishwasher whereby the dishrack (10) comprises a frame (see Figure 3) defined by metal rods (16 - see column 2, line 57) that have a plastic coating (18 - see column 2, line 57) which covers the frame (16 - see Figure 3). It is noted that when the dishwasher is in use, the shape of the rods, i.e., circular, would inherently cause the water in the dishwasher to be distributed over the surface of the coating and frame.

The claims differ from Llewellyn '993 in requiring: (a) the surface roughness of the coating to be greater than  $5\mu\text{m}$  (claims 1 and 9), and (b) the frame to be comprised of steel wire (claims 6 and 13).

\* With respect to (a), although Llewellyn '993 does not disclose the roughness of the coating, it can be seen from Figure 3 that the coating is smooth. Accordingly, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have fabricated the frame having a coating with a surface roughness, as called for in the claims and as determined through routine experimentation and optimization, thereby decreasing the risk of corrosion.

With respect to (b), although Llewellyn '993 does not disclose the frame being made from steel, it would have been an obvious engineering design choice to one of ordinary skill in the art at the time the invention was made to have utilized steel wire for the frame, thereby increasing the strength, stability, and rigidity of the frame.

Claims 4, 5, 11, and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Llewellyn '993 as applied to claims 1, 2, 6, 8, 9, 10, 13, and 14 above, and further in view of Keeny *et al.* '000. Llewellyn '993 discloses the assembly as advanced above.

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The claims differ from Llewellyn '993 in requiring: (a) the coating to be deposited by a coating process, and (b) the coating to comprise a polyamide.

Keeny *et al.* '000 teach that it is old in the art to utilize a plastic coating process (see column 4, lines 17-30) whereby a polyamide coating is deposited onto such devices as dishwasher baskets.

With respect to (a) and (b), it would have been obvious to one of ordinary skill in the art at the time the invention was made to have utilized a polyamide coating placed on the frame by a plastic coating process, as taught by Keeny *et al.* '000, thereby decreasing corrosion and wear resistance.

### ***Response to Arguments***

Applicants' arguments with respect to claims 1, 2, 4-6, 8, and 9 have been considered but are moot in view of the new ground(s) of rejection. The new grounds of rejection, i.e., under Section 103, were necessitated by the amendment incorporating the limitation "and having a surface roughness of  $R_z \geq 5\mu\text{m}$ " into claim 1. It is noted that claim 1 was previously rejected under Section 102.

In response to applicants' arguments (see page 4) regarding the Llewellyn reference that "applicants have discovered... by a small amount of heat", the fact that applicant has recognized another advantage which would flow naturally from following the suggestion of the prior art cannot be the basis for patentability when the differences would otherwise be obvious. See *Ex parte Obiaya*, 227 USPQ 58, 60 (Bd. Pat. App. & Inter. 1985). *Further*, it is noted that these

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arguments are considered to be more limiting than what is actually being claimed, and hence are commensurate with the scope of the claim.

### *Conclusion*

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jennifer E. Novosad whose telephone number is (703)-305-2872. The examiner can normally be reached on Monday-Thursday, 5:30am-4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Daniel P. Stodola can be reached on (703)-308-2686. The fax phone numbers for the organization where this application or proceeding is assigned are (703)-305-3597 for regular communications and (703)-305-3597 for After Final communications.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)-308-1113.

Jennifer E. Novosad/jen  
June 20, 2002

A handwritten signature in cursive script that reads "Daniel P. Stodola". The signature is written in black ink and is positioned above the printed name and title.

DANIEL P. STODOLA  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3600